

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ELAINE MCFARLAND,

Plaintiff,

CIVIL ACTION

v.

No. 07-349

QDOBA RESTAURANT CORPORATION
D/BA/ QDOBA MEXICAN GRILL, AND
DOES 1 - 10.

Judge Fischer

Defendants.

ORDER

AND NOW, this 17TH day of July, 2007, after considering the Defendant's Motion to Bifurcate Discovery and Plaintiff's response thereto, it is hereby ORDERED as follows:

1. According to the Manual for Complex Litigation §21.14, the considerations for determining whether class and merits based discovery should be bifurcated are (1) whether class and merit based discovery are sufficiently intermingled; and (2) whether the litigation is likely to continue absent class certification. Additionally, the Court has considered whether bifurcation would cause undue delay to the resolution of the litigation under Rule 1 of the Federal Rules of Civil Procedure, in light of similar decisions of courts in this Circuit. See In Re Plastics Additives Antitrust Litigation, No. Civ.A 03-2038, 2004 WL 2743591 at *3, (E.D. Pa. November 29, 2004). This Court also considered whether discovery needed to establish class certification will overlap with discovery required to prove the merits of Plaintiff's claim. See Id. *at 4, citing *Gray v. Winthrop*, 133 F.R.D. 39, 91 (N.D. Cal.1990).

In the instant case, this Court finds that bifurcation of discovery will be inefficient and improper, as class and merit discovery appears sufficiently intermingled and bifurcation would

therefore cause undue delay in these proceedings. Specifically, the Court believes that class and merit discovery will require inquiry into related issues regarding Defendant's use of Point of sale systems, resulting in an overlap of class and merit discovery. Furthermore, because Plaintiff has an individual private cause of action, her claim alone could continue absent class certification. Hence, the goals of efficiency and fairness are best met by allowing class and merit discovery to proceed concurrently in this case.

2. The Plaintiff's Motion to Bifurcate Discovery is hereby, DENIED. Class and merit discovery are to proceed at the same time in accordance with the Case Management Order of this Court issued on June 19, 2007.

//S// Nora Barry Fischer
Nora Barry Fischer
United States District Judge

cc: All counsel of record